

REMARKS

Claims 6-24 and 32-42 are pending in this application. Claims 1-5 and 25-31 have been canceled without prejudice or disclaimer. Claims 6-24 have been amended. Claims 32-42 have been added. Claims 6, 9, 10, 11 and 22 have been amended to recite each claim as an independent claim. Claims 7, 8, and 12-21, 23 and 24 have been amended to correct the dependency of each claim. Support for the amendments to claims 6-24 and new claims 32-42 can be found throughout the specification and claims as originally filed.

Applicants, by canceling or amending any claims herein, make no admission as to the validity of any rejection made by the Examiner against any of these claims. Applicants reserve the right to reassert any of the claims canceled herein or the original claim scope of any claim amended herein, in a continuing application.

No new matter has been added.

Applicant would like to thank the Examiner for the teleconference held on August 26, 2009 during which the claim objections recited in the Official Action were discussed. The Examiner indicated that the objection to claims 6-22 was incorrectly written. The Examiner further noted that a search was performed for the elected species and no prior art was found for the elected species. Accordingly, the search was then broadened to encompass the entire genus, which did not produce any prior art for the genus. The Examiner concluded that claims 6-22 should have been objected to as being dependent upon a rejected base claim and should have read that the claims would be allowable if rewritten in independent form, without limiting the claims to the

elected species.

Applicant notes that two Information Disclosures Statements have been filed in this application but no signed PTO-1449 forms have been received acknowledging that the Examiner has considered the references listed in those Information Disclosure Statements. Applicant requests that the Examiner consider the references listed in the Information Disclosure Statements filed on December 12, 2006 and January 18, 2007 and send the signed PTO-1449 forms with his next Official Action. In addition, Applicant files herein a third Information Disclosure Statement listing six (6) U.S. Patent references. Each of these references corresponds to a WIPO publication already submitted for consideration in the Information Disclosure Statement filed December 12, 2006. Applicants request that the Examiner considers this new Information Disclosure Statement, along with the two previously filed Information Disclosure Statements.

In view of the remarks set forth herein, further and favorable consideration is respectfully requested.

1. ***At pages 5-10 of the Official Action, claims 1-5 and 23-24 have been rejected under 35 U.S.C. § 112, first paragraph for failing to comply with the written description requirement.***

The Examiner asserts that sufficient written description has not been provided that would allow one of ordinary skill in the art to recognize all of the compounds of general formula I recited in claim 1.

Claims 1-5 have been canceled without prejudice or disclaimer. Claims 23 and 24 have been amended to now depend upon allowable claim 6. As allowable claim 6

meets the written description requirements, claims 23 and 24 now also meet the written description requirements. Therefore, the cancellation of claims 1-5 and the amendments to claims 23 and 24 render this rejection moot. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw this rejection.

2. *At pages 3-5 of the Official Action, claims 1-5 and 23-24 have been rejected under 35 U.S.C. § 112, first paragraph for lack of enablement.*

The Examiner acknowledges that the specification provides enablement for the compounds listed on pages 84-113 of the specification. However, the Examiner asserts that the specification is not enabling for all of the compounds claimed in general formula I recited in claim 1.

Claims 1-5 have been canceled without prejudice or disclaimer. Claims 23 and 24 have been amended to now depend upon allowable claim 6. As the specification provides enablement for allowable claim 6, the specification also provides enablement for Claims 23 and 24 that depend upon allowable Claim 6. Therefore, the cancellation of claims 1-5 and the amendments to claims 23 and 24 render this rejection moot. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw this rejection.

3. *At page 11 of the Official Action, claims 1-24 have been provisionally rejected on the ground of nonstatutory obviousness-type double patenting over claim 1 of copending U.S. Patent Application No. 11/884,934.*

The Examiner asserts that although the conflicting claims are not identical, they are not patentably distinct from each other because the copending U.S. Patent Application No. 11/884,934 claims the hydrochloride salt of the presently elected compound.

Applicants note that claims 1-5 have been canceled without prejudice or disclaimer, thereby rendering this rejection of claims 1-5 moot.

Applicants respectfully traverse this provisional rejection of claims 6-24. In particular, Applicants note that U.S. Patent Application No. 11/884,934 has an effective U.S. filing date of August 23, 2007. The present application has an earlier effective U.S. filing date of August 25, 2006. Pursuant to MPEP § 804, if a provisional nonstatutory obviousness-type double patenting rejection is the only rejection remaining in the earlier filed of two pending applications, the examiner should withdraw that rejection. Applicants note that upon entry of this amendment, this provisional nonstatutory obviousness-type double patenting rejection will be the only rejection remaining in the present application, which is the earlier filed of the two pending applications. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw this provisional rejection of claims 6-24.

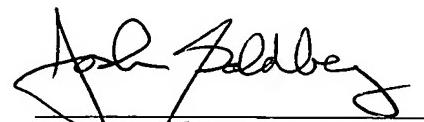
CONCLUSION

Based upon the above remarks and amendment, the presently claimed subject matter is believed to be novel and patentably distinguishable over the prior art of record. The Examiner is therefore respectfully requested to reconsider and withdraw all rejections and allow all pending claims in this application. Favorable action with an early allowance of the claims pending in this application is earnestly solicited. The Examiner is welcomed to telephone the undersigned attorney if he has any questions or comments.

In the event this paper is not timely filed, Applicants petition for an appropriate extension of time. Please charge any fee deficiency or credit any overpayment to Deposit Account No. 14-0112.

Respectfully submitted,

THE NATH LAW GROUP



Gary M. Nath
Registration No. 26,965
Joshua B. Goldberg
Registration No. 44,126
Sheldon M. McGee
Registration No. 50,454
Customer No. 34375

Date: August 27, 2009

THE NATH LAW GROUP
112 South West Street
Alexandria, VA 22314
Phone: (703)548-6284